

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

<p>SIOUX RURAL WATER SYSTEM, INC., a Non-Profit Corporation</p> <p>Plaintiff,</p> <p>vs.</p> <p>CITY OF WATERTOWN, a South Dakota Municipality, and WATERTOWN MUNICIPAL UTILITIES, an agency of the CITY OF WATERTOWN</p> <p>Defendants.</p>	<p>Civ. 15-1023</p> <p><b>PLAINTIFF’S MOTION IN LIMINE NO. 1</b></p> <p>To Exclude Defendants from Claiming Fire Protection Is A Prerequisite To § 1926(b) Protection</p>
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**INTRODUCTION**

Defendants have identified the Watertown Fire Marshall and several developers as witnesses in this case, to discuss “the need for water service sufficient to support fire protection.” *See* Defendants’ Third Supplemental Disclosure Required by Rule 26(a) (1).

**DISCUSSION**

This Court has ruled as a matter of law that the provision of fire protection is not a prerequisite to § 1926(b) protection. *See* Doc. 52 Opinion and Order. Any discussion concerning “fire protection” either through hydrants or sprinkler systems would mislead and confuse the jury, is not relevant under FRE 401, and would be unfairly prejudicial to Sioux under FRE 403. As this Court noted in its Opinion and Order:

“It is well established that a water district’s ability to provide water for fire protection is not a factor the court should analyze when determining whether the district has made service available.” Rural Water Dist. No. 4, Douglas City, Kan. v. City of Eudora, Kan., 659 F.3d 969, 982 (10<sup>th</sup> Cir.

2011). “Section 1926(b) of the Agricultural Credit Act, Title 7 U.S.C. § 1921 et seq. was not enacted for the purposes of fire protection-it was enacted to provide means of securing a ‘safe and adequate supply of running household water.’” Rural Water Dist. No. 3 v. Owasso Utilities Auth., 530 F. Supp. 818, 823 (N.D. Okla. 1979). Accord, Sequoyah County Rural Water Dist. No. 7 v. Town of Muldrow, 191 F. 3d at 1206 n. 10 (“a water association’s capacity to provide fire protection is irrelevant to its entitlement to protection from competition under §1926(b)”).

### **CONCLUSION**

Any reference to “fire protection” has no place in this trial. Defendants should be ordered not to question any witnesses or solicit testimony concerning “fire protection” at this trial.

Dated this 14<sup>th</sup> day of August, 2017.

/s/ Jeff Cole

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### **CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a true and correct copy of Plaintiff’s Motion in Limine No. 1, was electronically filed and served via the CM/ECF system on this 14<sup>th</sup> day of August, 2017 to:

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Dated this 14<sup>th</sup> day of August, 2017.

/s/ Jeff Cole

For the Firm